

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3624 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 NO
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APEX ELECTROSTATICS

Versus

NATVARBHAI RANCHHOBHAI HARIJAN

Appearance:

1. Special Civil Application No. 3624 of 2002
M/S TRIVEDI & GUPTA for Petitioner No. 1-2
MR RD RAVAL for Respondent No. 1
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 09/05/2002

ORAL JUDGEMENT

1. RULE. The learned counsel for the respondent waives service.

2. After the matter being argued at length, it was clear from the impugned award that, after due appreciation of the evidence on record, the Labour Court has arrived at the finding of fact to the effect that the petitioner had terminated the service of the respondent without complying with the provisions of law and without holding any departmental enquiry for the alleged absence of the respondent. It was also clear from the evidence of the petitioner itself that, even during the pendency of the reference, the petitioner was not willing and in a position to reinstate the respondent according to its own offer on account of the post having been filled up by another employee. On this basis, the Labour Court was inclined to award the order of reinstatement. From the material made available on record, the learned counsel for the petitioner could not make out any case of perversity or illegality in the award. As far as the award as regards backwages is concerned, it was vehemently argued that, by his own deposition, the respondent was incurring household expenditure of Rs.1,000/-, which he must be presumed to have earned, according to the learned counsel for the petitioner. The learned counsel for the respondent submitted that the respondent was incurring expenditure out of all sources of income including the income of his wife. And, in reality, he only got casual labour for the income of which the total figure could not be calculated. Under such circumstances, he fairly conceded that the backwages may be reduced by suitable percentage, upto 40%.

3. In the above facts and circumstances, the petition is partly allowed and, keeping the award as regards reinstatement intact, the order as regards backwages is interfered and it is reduced to 40%. Since the award is dated 18.9.2000 and must have been published in due course immediately thereafter and admittedly the petitioner has not complied with any part of it even in absence of any injunction, the petitioner is directed to comply with the award as modified by this order within a period of four weeks from today. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

09.5.2002

(KMG Thilake)